

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

JAMES R. SMITH, JR.

V

COMMONWEALTH EDISON COMPANY

Complaint as to billing/charges)
in Chicago, Illinois.)

No. 09-0303

Chicago, Illinois

October 7, 2009

Met pursuant to notice at 11:00 a.m.

BEFORE :

MR. JOHN RILEY, Administrative Law Judge.

APPEARANCES :

MR. JAMES R. SMITH, JR.,
9428 South Lafayette
Chicago, Illinois
appeared pro se;

MR. MARK L. GOLDSTEIN
3019 Province Circle
Mundelein, Illinois 60060
appeared for Respondent.

SULLIVAN REPORTING COMPANY, by
Teresann B. Giorgi, CSR

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I N D E X

<u>Witnesses:</u>	<u>Dir.</u>	<u>Crx.</u>	Re- <u>dir.</u>	Re- <u>crx.</u>	By <u>Examiner</u>
NONE					

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
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1 JUDGE RILEY: Pursuant to the direction of
2 the Illinois Commerce Commission, I call
3 Docket 09-0303. This is a complaint by James R.
4 Smith, Jr., versus Commonwealth Edison Company as to
5 billing and charges in Chicago, Illinois.

6 Mr. Smith you are currently appearing
7 without an attorney, is that correct?

8 MR. SMITH: Yes.

9 JUDGE RILEY: And you are currently living at
10 9428 South Lafayette Avenue in Chicago?

11 MR. SMITH: Yes.

12 JUDGE RILEY: And that is the address that is
13 the subject of this dispute, is that correct?

14 MR. SMITH: Yes.

15 JUDGE RILEY: Mr. Goldstein, would you enter an
16 appearance for the record, please.

17 MR. GOLDSTEIN: On behalf of Commonwealth Edison
18 Company, Mark L. Goldstein, 3019 Province Circle,
19 Mundelein, Illinois 60060. My telephone number is
20 847-949-1340.

21 I have with me today Monica Merino of
22 ComEd and Dan Kowalewsky of ComEd.

1 JUDGE RILEY: Thank you.

2 And, Mr. Smith, it's my understanding
3 from what I can gather from your complaint is that
4 what you're requesting actually is some kind of a
5 deferred payment agreement?

6 MR. SMITH: Yeah. I think it was in April the
7 check didn't clear. I didn't have enough money in
8 our account and that's where everything started.

9 JUDGE RILEY: Okay.

10 MR. SMITH: By the time I put the money back
11 into the account, you know, they had kicked me off
12 the payment plan.

13 JUDGE RILEY: Is it my understanding you were
14 attempting to make a payment --

15 MR. SMITH: I was trying to --

16 JUDGE RILEY: -- on an existing deferred payment
17 agreement?

18 MR. SMITH: I was trying to do that.

19 JUDGE RILEY: And you were unable to make the
20 amount of the payments --

21 MR. SMITH: No, they told me I wasn't able to do
22 it because I defaulted on the agreement.

1 JUDGE RILEY: Okay.

2 MR. SMITH: And that was the dispute. I tried
3 several times to work it out with one of the
4 supervisors -- one of the representatives and then I
5 tried with the supervisors.

6 JUDGE RILEY: So essentially, you're requesting
7 to get back to the payment agreement?

8 MR. SMITH: Yeah, I was trying to get back, but
9 they didn't do it. Everything just blowed up.

10 JUDGE RILEY: JUDGE RILEY, what is ComEd's
11 position?

12 MR. GOLDSTEIN: What Mr. Smith has said is
13 essentially correct. He had a previous docket,
14 08-0372. And in that docket ComEd and Mr. Smith
15 entered into a settlement agreement. Mr. Smith
16 defaulted on the settlement agreement. That
17 particular docket was dismissed by the Commission.

18 Mr. Smith, in late January of this
19 year, attempted to reopen the docket -- filed a
20 motion to reopen the docket. I filed a response to
21 that. And nothing was ever done with that
22 particular docket. I guess that is what caused

1 Mr. Smith to file this new complaint.

2 JUDGE RILEY: Wasn't there any ruling on the
3 motion?

4 MR. GOLDSTEIN: There was never a ruling on the
5 motion to reopen that docket or a ruling on my
6 motion to deny that reopening.

7 As I said, Mr. Smith, entered into --
8 that docket was dismissed by the Commission --

9 JUDGE RILEY: That's the 08 docket, right?

10 MR. GOLDSTEIN: Yes.

11 -- back in July of last year.

12 Mr. Smith has defaulted on his payment
13 arrangement under the settlement agreement.

14 MS. MERINO: Mr. Smith, have you made any
15 payments?

16 MR. GOLDSTEIN: He hasn't made any payments
17 since March of this year.

18 MR. SMITH: No.

19 MR. GOLDSTEIN: So we have nothing to talk
20 about. There's a large undisputed amount that
21 Mr. Smith owes.

22 MR. SMITH: I tried to send them \$650 after I

1 defaulted. They said they didn't want it. I called
2 and asked them -- and I explained to them what
3 happened. They said, No. I called Mr. Ken
4 Kirschner with the Illinois Commerce Commission, he
5 told me no.

6 You know, this is just -- and then it
7 just started snowballing.

8 JUDGE RILEY: Right.

9 MR. SMITH: I tried to call.

10 JUDGE RILEY: Did you actually attempt to make a
11 \$650 payment?

12 MR. SMITH: I know I did. I called him. He
13 say, If you do it, you'll be wasting your time
14 because your lights would still get cut off. So I
15 said I'm not going to just pay no 600 something
16 dollars.

17 JUDGE RILEY: Is your service cut off now?

18 MR. SMITH: Oh, no.

19 JUDGE RILEY: All right.

20 MR. GOLDSTEIN: But the bottomline of it all is,
21 Judge, that Mr. Smith has not made any payment since
22 March of this year. He's not made any payments, in

1 effect, for at least six months. There is an
2 undisputed amount of his bill. He hasn't paid
3 anything. And he's subject to termination of
4 service.

5 MS. MERINO: Your house is not being turned off
6 is because you opened this formal complaint. And
7 based on that, we put a hold on his account for the
8 disputed amount.

9 MR. SMITH: I understand.

10 MS. MERINO: But the undisputed amount, you have
11 not made a payment since March.

12 MR. SMITH: No.

13 JUDGE RILEY: What is the disputed amount?
14 Could either side tell me?

15 MS. MERINO: The disputed amount is \$3,725.67.

16 MR. GOLDSTEIN: 3725.

17 MS. MERINO: 3725.

18 And his outstanding balance right now
19 from early March through the present is \$1,142.
20 That's the present bill right now, not the disputed
21 amount.

22 JUDGE RILEY: Okay. It's 1,000- --

1 MS. MERINO: --142.74. And that's not
2 considering the late charges.

3 JUDGE RILEY: Mr. Smith, is it your statement
4 that you had attempted to make a payment on that
5 \$1,142.74?

6 MR. SMITH: Well, I already -- in two weeks I
7 can at least give ComEd \$1800.

8 JUDGE RILEY: You can give --

9 MR. SMITH: I can give them \$1800 and then we
10 can set up a payment plan. I already knew what it
11 was going to boil down to. I know I can't get out
12 of this bill because wintertime is coming, I have
13 children.

14 JUDGE RILEY: What's the -- is two weeks the
15 earliest you can get --

16 MR. SMITH: Yes.

17 JUDGE RILEY: Would this be sufficient for
18 Commonwealth Edison?

19 MR. MERINO: Well, what about the disputed
20 amount, that's part of the settlement from the last
21 case?

22 JUDGE RILEY: Well, if he's willing to pay \$1800

1 and only 1142 is the amount not in dispute --

2 MR. GOLDSTEIN: So he'd still owe about \$1800.

3 Then he wants to enter into another deferred payment
4 arrangement for the \$1800, is that what you're
5 saying?

6 MR. SMITH: Yeah, I'll go to the -- what I
7 normally did, I went to the currency exchange on
8 79th last time, where I can get a cashier's check.
9 I know I got to pay the bill or I won't have any
10 heat in the wintertime.

11 MS. MERINO: I did this for you. I broke down
12 the amounts that you owed and I put the billing
13 statement also for your information. And this is
14 not a disconnection notice, it's just a notice that
15 this is what's going to happen if you don't pay.

16 MR. SMITH: I know this.

17 MS. MERINO: Now, you're telling the Court that
18 you're going to make an \$1800 payment.

19 MR. SMITH: Yeah, two weeks.

20 MS. MERINO: October --

21 JUDGE RILEY: That would be October 21st.

22 So by October 21 you can make a \$1800

1 payment?

2 MR. SMITH: Yes, I'll just get a cashier's
3 check -- or I'll go to my bank and get one. I bank
4 at Chase. It doesn't make any difference.

5 MS. MERINO: So October 21 I'm going to open up
6 the records and see that you made that payment and
7 then I will contact you and get you on a DPA.

8 JUDGE RILEY: Okay. But that is contingent
9 upon --

10 MR. KOWALEWSKY: That would leave about \$2200.
11 When do you think you can make another large
12 payment? Because we have to go back to the Company
13 and actually -- since you've defaulted once, we just
14 need to give a good faith effort.

15 JUDGE RILEY: Mr. Smith, it's my understanding
16 that you're not disputing that the sums are wrong.

17 MR. SMITH: I'm not disputing --

18 JUDGE RILEY: It's just that you want to be able
19 to pay --

20 MR. SMITH: Yeah. I'm working. I can see if I
21 wasn't working.

22 JUDGE RILEY: Okay. And I guess ComEd --

1 MR. SMITH: All this just started over 500 and
2 some dollars and it -- you know, I just think about
3 this all the time.

4 JUDGE RILEY: Okay. We'll see if we can't get
5 it resolved today.

6 MR. GOLDSTEIN: Well, I --

7 JUDGE RILEY: Because if the Complainant is
8 willing to pay the sums --

9 MR. SMITH: This should never have overblowed,
10 that is what I was trying to explain to
11 Mr. Kirschner on the phone.

12 JUDGE RILEY: Okay. Let's not worry about him.

13 MR. GOLDSTEIN: The bottomline, though, is, you
14 know, if you default again on the next deferred
15 payment arrangement, you're going to have your
16 service terminated. You have to understand that.

17 JUDGE RILEY: And I guess ComEd's next question
18 was when can you make the next large payment after
19 the 1800?

20 MR. SMITH: In about a month.

21 JUDGE RILEY: What would a large payment
22 constitute?

1 MR. SMITH: I say around 1800.

2 JUDGE RILEY: On October 21.

3 MR. SMITH: I get paid every two -- the next
4 large payment I can do is probably December, that's
5 the closest I can go because I pay \$650 rent.

6 About the first week in December I can
7 make about 1,000 and that should do it right there.
8 I told you I can make \$1800 in two weeks and then in
9 December I'll be able to do it -- I've been saving
10 this money up actually anyway. I've been actually
11 saving the money up. When I was writing you all I
12 was saving the money up, you know. I didn't just
13 want to make a payment and then go to court and then
14 they say it's still --

15 MS. MERINO: I'm going to put my phone number
16 here just in case, as well as my name. And if you
17 want to, when you make that payment you call me and
18 you make a good faith attempt to resolve your matter
19 and I'm here to work for you, okay?

20 MR. SMITH: All right. It won't be a check.
21 I'll get a cashier's check from the bank.

22 MR. GOLDSTEIN: The December payment, when are

1 you going to make that?

2 MR. SMITH: The first week in December.

3 MR. GOLDSTEIN: December 7th?

4 MR. SMITH: It should be about the 7th.

5 MR. GOLDSTEIN: That would leave 900 some odd

6 dollars left over for the deferred payment.

7 That's fine.

8 MS. MERINO: December 1 is a Tuesday.

9 MR. GOLDSTEIN: We'll give him until the 7th.

10 MR. KOWALEWSKY: Mark, why don't you give him

11 until the Friday of the second week.

12 MS. MERINO: December 11.

13 MR. KOWALEWSKY: December 11.

14 JUDGE RILEY: Speak up for the court reporter.

15 MR. GOLDSTEIN: Can we go off the record?

16 JUDGE RILEY: Okay.

17 (Whereupon, a discussion

18 was had off the record.)

19 MR. GOLDSTEIN: Here's our thought, Judge, you

20 know, I guess the problem is that Mr. Smith is in

21 default. What I would like to do today is have

22 Mr. Smith sign off on a settlement agreement.

1 JUDGE RILEY: All right.

2 MR. GOLDSTEIN: And also sign a stipulation to
3 dismiss. If Mr. Smith makes the two payments that
4 he said he's going to make, the one by October 21st
5 and the other one by December 11th, then I will file
6 the stipulation to dismiss.

7 So what I would ask you to do, Judge,
8 is continue this matter to later in December for
9 another status hearing to see if all matters have
10 been resolved.

11 JUDGE RILEY: Okay. So, in other words, the
12 parties are going to commit to a settlement
13 agreement. That's what he's asking you, Mr. Smith?

14 MR. SMITH: And come back to court?

15 JUDGE RILEY: No, no. The whole purpose of the
16 settlement agreement is that we don't have to come
17 back.

18 What they want is that both parties
19 will commit to certain things and one would be that
20 you are going to make the payments that you said you
21 would make.

22 And so what I would do is continue

1 this matter and then once the payments have been
2 made, as according to the settlement agreement, then
3 what I will do is simply just close this record and
4 have it dismissed. And then you'll have your
5 settlement agreement with Commonwealth Edison to
6 make the payments and then clear this matter up as
7 well as you can.

8 MR. GOLDSTEIN: I guess for the purposes of the
9 record, Judge, if you would continue this matter to
10 later in December, I think that would do it for the
11 hearing this morning.

12 JUDGE RILEY: That second payment that he
13 mentioned, were you going to hold that open until
14 December 11th?

15 MR. GOLDSTEIN: Yes. So it would be some date
16 after December 11th.

17 JUDGE RILEY: How about December 15th?

18 MR. GOLDSTEIN: Is that all right with you,
19 Mr. Smith?

20 MR. SMITH: The payment?

21 MR. GOLDSTEIN: No, no, the payment will be made
22 by the 11th. This is for the status hearing to

1 dismiss the matter.

2 JUDGE RILEY: If we do have another status, we
3 can do that telephonically.

4 MR. SMITH: Okay.

5 JUDGE RILEY: That will be at 10:00 a.m.

6 MR. GOLDSTEIN: You can just continue the matter
7 and let me finish the paperwork.

8 JUDGE RILEY: You can just work out the
9 paperwork here.

10 MR. GOLDSTEIN: Yes.

11 JUDGE RILEY: All right. I'm going to leave you
12 and ComEd to work out the details here on the
13 settlement agreement.

14 MR. SMITH: Okay.

15 JUDGE RILEY: As far as my involvement is
16 concerned then, I will continue this matter until
17 December 15 at 10:00 a.m. for status.

18 And as I said, we can do that
19 telephonically. And if the payments are made and
20 the settlement agreement goes through as planned,
21 then there would probably be no need for us to
22 reconvene.

1 MR. SMITH: Okay.

2 JUDGE RILEY: Thank you.

3 (Whereupon, the above-entitled
4 matter was continued to
5 December 15, 2009.)

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